IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-09-2005

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

C.R.P. (PD) No. 883 & 959 of 2004
and
C.M.P. No. 8365 & 9565 of 2004

1. K.R. Sengottuvelu
2. Palanigounder

3. Mohan
   Inspector of HR & CE Department
   Kalipatty Village
   Tiruchengode Taluk .. Petitioners in
   Namakkal District CRP PD No.883/04/Defendant 1,4&6

K.R. Sengottuvelu (died)
Palanigounder .. Petitioner in
CRP PD No. 959/04/4th Defendant

Versus

1. Karuppa Naicker
2. Rama Naicker
3. Poosari Naicker
4. Chinnusamy .. Respondents in
5. Sakthivel CRP PD No.883/04/
Plaintiffs 4 & 8

1. Karuppa Naicker
2. Rama Naicker
3. Poosari Naicker
4. Chinnusamy
5. Sakthivel
6. Sengodagounder

7. Commissioner, HR & CE
   Nungambakkam
   Chennai - 600 034 .. Respondents in CRP PD
No.959/04/Plaintiffs 4to8/
Defendants 5to7

8. Kandappa gounder

CRP PD No. 883 of 2004: Petition under Article 227 of The Constitution of India against the order dated 27-01-2004 made in I.A. No. 1448 of 2003 in O.S. No. 42 of 1986 on the file of District Munsif Court, Tiruchengode.

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CRP PD No. 959 of 2004: Petition under Article 227 of The Constitution of India against the order dated 19-12-2003 made in C.A. No. 8260 of 2003 in O.S. No. 599 of 2003 on the file of Sub-Court, Namakkal.

For Petitioners : Mr. N. Manokaran in both the Revision Petition

For Respondents : Mr. Muniruddin Sherif for RR1, 2, 4 & 5 in both the Revision Petition

Mr. Sugumar (HR & CE) for R7 in CRP PD No. 959 of 2004

COMMON ORDER

The defendants 1, 4 and 6 in O.S. No. 42 of 1986 on the file of the District Munsif Court, Tiruchengode are the revision petitioners in CRP PD No. 883 of 2004.

2. The fourth defendant in O.S. No. 599 of 2003 on the file of the Sub-court, Namakkal is the petitioner in CRP PD No. 959 of 2004.

3. The revision petitioner in CRP PD No. 959 of 2004 and the second petitioner in CRP PD No. 883 of 2004 have filed copy application in C.A. No. 8260 of 2003 praying the court below to issue certified copy of the certain documents, which was rejected, hence CRP PD No. 959 of 2004 has been filed.

4. The petitioners in CRP PD No. 883 of 2004 have filed I.A. No. 1448 of 2003 in O.S. No. 42 of 1986 seeking for a direction to summon the suit documents, which was dismissed, hence CRP PD No. 883 of 2004 has been filed.

5. Mr. Manokaran, learned counsel appearing for the revision petitioner submits that both the revision petitions have been filed seeking the very same relief of direction to the court below to issue certified copy of certain documents and if any one of the revision petitions is allowed, other revision petition will become infructuous, however, he submits that the court below dismissed the copy application filed in CA No. 8260 of 2003 under the wrong impression that the said documents were not marked.

6. The learned counsel for the petitioner relied on the below mentioned decisions in support of his case:-

i) (Jagatbhai Punjabhai Palkhiwala and others vs. Vikrambhai Punjabhai Palkhiwala and others) AIR 1985 Gujarat 112 wherein in paragraph No. 5 and 6 it was held thus:-

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"5. This reason given by the learned Trial Judge is not correct and is too technical. If the inspection of the documents could be granted by the court, there is no reason why the persons who were permitted to take inspection cannot take xerox copy of the same. The purpose of the inspection is to know and study the documents. The person who takes inspection can also take notes and even make copies of the same. In view of very large number of documents, the petitioners wanted that they may be permitted to take xerox copies of the same. Their say is that instead of taking inspection and looking at the documents by their own-eyes, they would like to have their view from the camera eye. The request for xerox copies at their own cost is reasonable. Once the Court has granted inspection, this request is merely to make that inspection more effective. By allowing the plaintiff's to take xerox copies, the Court is neither verifying nor certifying them to be true and correct copies. The Plaintiffs will be taking copies for their own purpose in order that they can make effective and detailed study and have proper consultation with their lawyers. That would not only serve the cause of the petitioners, but will also enable the Counsel to render proper assistance to the Court. Since the Court is not verifying or certifying the correctness of the copies, there is no need of the documents to have become part of the record. Since the documents happen to be in the custody of the court, the parties cannot take xerox copies of the same without permission of the Court. But that does not mean that the Court can refuse such permission only on the ground that they have not become part of the record. The reason given is fundamentally erroneous and merely technical.

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6. If the xerox copies are not permitted to be taken, the purpose of the inspection will become ineffective and would be frustrated. No harm or prejudice can occur to the other side if the xerox copies are permitted to be taken. However, only care is required to be taken to see that while the xerox copies are being taken, an officer of the Court appointed by the trial court remains present and retains the custody of the documents and the representative of the other side is also allowed to remain present so that no allegation is made in future. The cost and remuneration of the court officer appointed for that purpose will have to be borne by the

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petitioners and the amount will have to be deposited by them as may be quantified by the trial court. The defendants would also be entitled to have the same facility subject to the similar conditions."

(ii) (K. Nagarajan vs. K.S. Ramasamy and another) (2003) 3 M.L.J. 211 wherein in paragraph Nos. 13 and 14, it was held thus:-

"13. In (Jagatbhai Punjabhai Palkhiwala and others vs. Vikrambhai Punjabhai Palkhiwala and others) AIR 1985 Gujarat 112, while dealing with such a situation, the Gujarat High Court has held as follows:-

5. This reason given by the learned Trial Judge is not correct and is too technical. If the inspection of the documents could be granted by the court, there is no reason why the persons who were permitted to take inspection cannot take xerox copy of the same. The purpose of the inspection is to know and study the documents. The person who takes inspection can also take notes and even make copies of the same. In view of very large number of documents, the petitioners wanted that they may be permitted to take xerox copies of the same. Their say is that instead of taking inspection and looking at the documents by their own-eyes, they would like to have their view from the camera eye. The request for xerox copies at their own cost is reasonable. Once the Court has granted inspection, this request is merely to make that inspection more effective. By allowing the plaintiff's to take xerox copies, the Court is neither verifying nor certifying them to be true and correct copies. The Plaintiffs will be taking copies for their own purpose in order that they can make effective and detailed study and have proper consultation with their lawyers. That would not only serve the cause of the petitioners, but will also enable the Counsel to render proper assistance to the Court. Since the Court is not verifying or certifying the correctness of the copies, there is no need of the documents to have become part of the record. Since the documents happen to be in the custody of the court, the parties cannot take xerox copies of the same without permission of the Court. But that does not mean that the Court can refuse such permission only on the ground that they have not become part of the record. The reason given is fundamentally erroneous and merely technical.

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6. If the xerox copies are not permitted to be taken, the purpose of the inspection will become ineffective and would be frustrated. No harm or prejudice can occur to the other side if the xerox copies are permitted to be taken. However, only care is required to be taken to see that while the xerox copies are being taken, an officer of the Court appointed by the trial court remains present and retains the custody of the documents and the representative of the other side is also allowed to remain present so that no allegation is made in future. The cost and remuneration of the court officer appointed for that purpose will have to be borne by the petitioners and the amount will have to be deposited by them as may be quantified by the trial court. The defendants would also be entitled to have the same facility subject to the similar conditions.

14. In any suit apart from the documents marked, there is likelihood of presence of other unmarked documents like warrant issued to the Commissioner or notice given to the Commissioner by the parties etc., Assuming that a party disputes receipt of notice issued by the Advocate Commissioner, the notice said to have been given by the Commissioner will become an important document and certainly copy of such notice shall be required by the other party who claims that actually notice has been given to the party who disputes it. Though the notice given by the Commissioner to the party may not be a part of the record as far as the suit is concerned, since it is not marked as an exhibit in the suit, still a notice can become necessary for a particular party for which he may require copy. Therefore, the document produced in Court even though not marked as a document in evidence in a suit, still necessity may arise for requirement of a certified copy of such a document. That is why under O.62 and O.11, Rule 15 of Civil Rules of Practice, it is clearly mentioned that any document produced in Court can be inspected. The terms mentioned in Rule 62 and O.11, Rule 15 of Civil Rules of Practice are wider in nature, in the sence that the documents referred are not only marked but also produced in Court."

7. The provisions of Rule 62 of Civil Rules of Practice contemplates that a party shall be at liberty to inspect and obtain a copy of any document recited or referred to in a plaint or written

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statement and filed in Court therewith or thereafter.

8. Similarly, the provisions of Order 11 Rule 15 CPC contemplates thus:-

> "15. Inspection of documents referred to in pleadings or affidavits.- Every party to a suit shall be entitled (at or before the settlement of issues) to give notice to any other party, in whose pleadings or affidavits reference is made to any document (or who has entered any document in any list annexed to his pleadings) to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant in the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit."

9. It is seen from the above provisions of Law that the parties to the pleadings are entitled to certified copy of the documents, even though the documents, which are filed along with the pleadings were not marked. The decisions extracted above also clarify the same in terms of Civil Rules of Practice. Both the courts below namely the District Munsif Court, Tiruchengode as well as the Sub-Court, Namakkal, without proper consideration of the said provisions of Law dismissed the I.A. No. 1448 of 2002 and C.A. No. 8260 of 2003 respectively. Hence, the impugned order passed in both the revision petition are liable to be set aside.

10. In view of the fact that if any one of the revision petitions is allowed, the purpose sought for by the petitioner will be served, it is sufficient, and accordingly the Sub-court, Namakkal is directed to issue certified copies of the documents sought for by the petitioner in C.A. No. 8260 of 2003 expeditiously and CRP PD No. 959 of 2004 is allowed accordingly. No costs.

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11. In view of the order passed in CRP PD No. 959 of 2004, no order is required in CRP PD No. 883 of 2004 and the same is closed. No costs. Connected CMPs are closed.

rsh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The District Munsif
   District Munsif Court
   Tiruchengode

2. The Subordinate Judge
   Sub-Court, Namakkal.

3. The Section Officer,
   VR Section,
   High court,
   Madras.

+1cc to Mr. M. Muniruddin sheriff, Advocate,(SR.37524)
+2cc to Mr. N. Manokeran,Advocate,(SR.37529, 37530)

PSI(co)
rvr/14.9.

CRP PD No. 883 & 959/2004

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